

After Recording Return to:
City Manager
City of Frisco
6101 Frisco Square Blvd.
Frisco, Texas 75034

DEVELOPMENT AGREEMENT
(Newman Village-Eldorado Parkway at Lenox Lane)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between the CITY OF FRISCO, TEXAS, a municipal corporation ("Frisco"), and DARLING FRISCO PARTNERS, LTD, a Texas limited partnership ("Owner").

WHEREAS, Owner owns 98.9467 acres, more or less, situated in a portion of the J. Masters Survey, Abstract No. 831, the L. Morrell Survey, Abstract No. 863 and the MEP&P RR Survey, Abstract No. 921, Denton County, Texas and adjacent to Eldorado Parkway, as more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes (the "Property"); and

WHEREAS, the Texas Department of Transportation ("TxDOT") has plans to reconstruct Eldorado Parkway (FM 2934) ("Eldorado Parkway"), including without limitation, the construction of six travel lanes and the construction of median openings along Eldorado Parkway (the "Project"); and

WHEREAS, Owner has, in conjunction with the construction of the Project and based on the direct benefit to the Property, requested the construction of an eastbound left turn bay and a westbound right-turn deceleration lane on Eldorado Parkway at the median opening for Lenox Lane hereinafter described (hereinafter defined as the "Property Access Improvements") as well as a traffic signal at the median opening (hereinafter defined as the "Traffic Signal"); and

WHEREAS, TxDOT has agreed to construct, as part of its reconstruction of Eldorado Parkway, the Property Access Improvements at the locations hereinafter set forth provided: (a) Owner pays Dannenbaum Engineering to incorporate the Property Access Improvements into TxDOT's plans for Eldorado Parkway; and (b) Owner pays for the construction costs of the Property Access Improvements; and

WHEREAS, as a condition of TxDOT's construction of the Property Access Improvements made the subject of this Agreement, TxDOT requires that Frisco tender the construction costs therefor; and

WHEREAS, Frisco has agreed to construct the Traffic Signal provided Owner pays for its portion of the construction costs of same as more particularly described in Exhibit C; and

WHEREAS, in consideration for the construction of the Property Access Improvements and Traffic Signal at the locations desired by Owner, Frisco requires Owner to place the costs related to the construction of the Property Access Improvements and the Owners proportionate

costs related to the construction of the Traffic Signal construction costs in escrow as hereinafter set forth; and

WHEREAS, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to participate in the construction of the Project as provided herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco and Owner agree as follows:

1. Description of Project. The Project consists of the construction of certain improvements to Eldorado Parkway, including without limitation, the location and construction of six travel lanes, median openings, and deceleration lanes along Eldorado Parkway, as more particularly depicted on Exhibit B, attached hereto and incorporated herein for all purposes.

2. Land Subject to Agreement. The land that is the subject of this Agreement is the Property. Owner represents it is the sole owner of the Property.

3. Design of Property Access Improvements. TxDOT requires that all design changes for the Project be made by its design consultant, Dannenbaum Engineering, and that the modified plans be submitted to TxDOT by Frisco. Owner agrees that it will contact and coordinate with Dannenbaum Engineering in order to incorporate the Property Access Improvements into the design for the Project. Owner agrees to pay the fee, if any, for these services directly to Dannenbaum Engineering, separate and apart from this Agreement. Owner agrees to have the modified plans delivered to Frisco and Frisco agrees to submit them to TxDOT.

4. Location of Property Access Improvements. In exchange for the payment of the design and construction costs, TxDOT has agreed to construct the Property Access Improvements: (a) at the locations shown on Exhibit B; and (b) in accordance with TxDOT design and construction standards. The median opening and deceleration lanes located immediately adjacent to a portion of the Property are depicted on Exhibit B (the "Property Access Improvements"), however, the exact location of the Property Access Improvements are subject to change, as solely determined by TxDOT. If the ultimate location(s) of the Property Access Improvements is/are changed, in whole or in part as described herein, resulting in the complete removal of any portion of the Property Access Improvements from the Project, Frisco will return the associated Escrow Funds (hereinafter defined), exclusive of interest earned, if any, to the Owner within thirty (30) days of TxDOT's final decision with regard to the complete removal of the portion of the Property Access Improvements from the Project.

5. Completion of Construction of Access Improvements. Owner acknowledges and agrees that Frisco cannot control the completion of the construction, including without limitation, the timeline therefore, of the Property Access Improvements, and, as such, Owner agrees that Frisco shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Property, resulting, in whole or in part, directly or indirectly, from TxDOT's failure to complete the construction of the Property Access Improvements by any certain date and/or as set forth in this Agreement. Owner acknowledges and agrees that TxDOT may require one or more

traffic signal warrant analyses before Frisco constructs the Traffic Signal and that Owner will be responsible for its proportionate share of the costs of any such analyses.

6. Construction of Project. TxDOT will construct the Project including the Property Access Improvements and Frisco will construct the Traffic Signal. Owner has provided Frisco with the estimate of the costs to construct the Property Access Improvements and Owners's portion of the Traffic Signal, which amount is anticipated to be One Hundred Twenty Nine Thousand, Eight Hundred, Seventy Eight and 24/100 Dollars (\$129,878.24), as more particularly described in Exhibit C, attached hereto and incorporated herein for all purposes (the "Property Access Improvements and Traffic Signal Estimated Construction Costs"). The phrase "construction costs" as used herein shall mean Owner's proportionate share of the actual construction costs, TxDOT engineering and contingency fee, surveying costs, landscape design, geotechnical materials testing and inspection fees associated with the Property Access Improvements. The phrase "cost overruns" as used herein shall mean reasonable and necessary costs, which may be incurred by TxDOT or Frisco in the construction of the Property Access Improvements and which are over and above the Property Access Improvements Estimated Construction Costs.

7. Owner's Payment of the Property Access Improvements and Traffic Signal Estimated Construction Costs. Within fifteen (15) days of its execution of this Agreement, Owner will pay into an escrow account, at the location solely determined by Frisco, funds equal to the Property Access Improvements and Traffic Signal Estimated Construction Costs (the "Escrow Funds"). The Escrow Funds will be available to Frisco to pay to TxDOT or others for the construction costs associated with the Property Access Improvements, and Frisco shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Escrow Funds in connection with the construction of the Property Access Improvements and the Traffic Signal. Frisco shall further be entitled to, as its sole property, any and all interest earned on the Escrow Funds, and Owner hereby waives and relinquishes any and all rights or claim to interest earned, if any, on the Escrow Funds. In addition, if any amount of the Escrow Funds remains in the account after TxDOT has issued a final letter of acceptance for the construction of Eldorado Parkway, including but not limited to, the Property Access Improvements, and paid all of the construction costs associated with the Property Access Improvements, as solely determined by Frisco, ("Remaining Escrow Funds"), Owner shall be entitled to, as its sole property, the Remaining Escrow Funds. Frisco may, in its sole discretion, utilize the interest earned on the Escrow Funds, if any, for any purpose. Further, Owner shall, within thirty (30) days of receiving written notice from Frisco, tender to Frisco any and all reasonable and necessary construction cost overruns associated with the construction of the Property Access Improvements. Notwithstanding anything to the contrary herein, Frisco and Owner agree that Frisco shall, under no circumstance, be responsible for any part or portion of the construction costs associated, directly or indirectly, with the Property Access Improvements.

8. Disclaimer/Waiver of Damages/Liability. (a) Owner acknowledges and agrees that Frisco is not providing any guarantee, representation and/or warranty, and Frisco hereby disclaims any guarantee, representation and/or warranty, of any work performed by TxDOT or Frisco, their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Property Access Improvements and the Traffic Signal, in whole or in part.

(b) OWNER HEREBY RELEASES FRISCO, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM AND AGAINST, AND WAIVES ANY AND ALL RIGHTS TO, ANY AND ALL CLAIMS AND/OR DEMANDS FOR DAMAGES (PERSONAL OR PROPERTY), INJURY (INCLUDING DEATH), OR OTHERWISE, IT/THEY MAY HAVE WITH REGARD TO THE CONSTRUCTION AND/OR COMPLETION OF THE PROPERTY ACCESS IMPROVEMENTS AND/OR OR ANY OTHER ACT AND/OR OMISSION RELATING, DIRECTLY OR INDIRECTLY, TO THE PROPERTY ACCESS IMPROVEMENTS, IN WHOLE OR IN PART, AS PROVIDED IN THIS AGREEMENT, EXCEPT TO THE EXTENT ANY SUCH CLAIMS ARISE DUE TO, OR DAMAGES ARE CAUSED BY, SOLELY AND DIRECTLY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF FRISCO OR ITS AUTHORIZED COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES.

9. INDEMNIFICATION. OWNER HEREBY AGREES TO FULLY DEFEND, INDEMNIFY, AND HOLD HARMLESS, FRISCO, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF OWNER, THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES AND/OR ANY OTHER THIRD PARTIES FOR WHOM OWNER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF THE CONSTRUCTION OF THE PROPERTY ACCESS IMPROVEMENTS PURSUANT TO THIS AGREEMENT, (HEREINAFTER "CLAIMS"). IN ITS SOLE DISCRETION, FRISCO SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY OWNER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY FRISCO, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY FRISCO IN WRITING. FRISCO RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, FRISCO IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY FRISCO IS NOT TO BE CONSTRUED AS A WAIVER OF OWNER'S OBLIGATION TO DEFEND FRISCO OR AS A WAIVER OF OWNER'S OBLIGATION TO INDEMNIFY FRISCO PURSUANT TO THIS AGREEMENT. OWNER SHALL RETAIN FRISCO-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF FRISCO'S WRITTEN NOTICE THAT FRISCO IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF OWNER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, FRISCO SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR THE REASONABLE AND NECESSARY LEGAL COSTS INCURRED BY FRISCO. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

10. PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(A) OWNER ACKNOWLEDGES AND AGREES THAT:

(I) THE FEES TO BE IMPOSED BY FRISCO REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:

- (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
 - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
 - (C) NUISANCE; AND/OR
 - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.
- (II) THE AMOUNT OF OWNER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT OWNER'S DEVELOPMENT PLACES ON FRISCO'S INFRASTRUCTURE.
- (III) OWNER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO FRISCO, IF ANY, PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY OWNER FOR SUCH LAND, AND OWNER HEREBY WAIVES ANY CLAIM THEREFOR THAT IT MAY HAVE. OWNER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF OWNER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. OWNER AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.
- (IV) OWNER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES ARISING FROM THE NEGLIGENT, KNOWING OR INTENTIONAL ACTS OF OWNER, INCLUDING BUT NOT LIMITED TO OWNER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES BROUGHT PURSUANT TO THIS PARAGRAPH.
- (B) OWNER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(C) OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(D) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Property Access Improvements and Traffic Signal only. Frisco Ordinances covering property taxes, utility rates and fees, park dedication, perimeter streets, pro rata fees, any and all impact fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Owner to Frisco under any other ordinance whether now existing or in the future arising.

12. Default. In the event Owner fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from Frisco, Frisco shall have the following remedies in addition to Frisco's other rights and remedies, at law or in equity:

- (a) to refuse to issue any and all building permits for the Property; and/or
- (b) to, without notice or any other action of Frisco, immediately revoke any and all building permits issued, and any construction and/or development of the Property shall immediately cease; and/or
- (c) to file this instrument in the Land Records of Denton County as a lien and/or encumbrance against the Owner and/or the Property; and/or
- (d) to refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or
- (e) to refuse to finally accept the Property and/or any portion thereof; and/or
- (f) to immediately, without further notice to Owner, cease any and all design and/or construction of the Property Access Improvements and Traffic Signal; and/or
- (g) to seek specific enforcement of this Agreement.

In the event of Frisco's default under this Agreement, Owner will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

13. Continuity. This Agreement shall be a covenant running with the land and shall be binding upon Owner, its officers, directors, agents, representatives, employees, heirs, representatives, legatees, successors, assigns, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Denton County.

14. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco, to:

City of Frisco
ATTN: George Purefoy, City Manager
6101 Frisco Square Boulevard
Frisco, Texas 75034
(telephone) 972-292-5100
(facsimile) 972-292-5122

If to Owner, to:

Darling Frisco Partners, LTD
ATTN: Robert C. Darling
2500 Legacy Drive, Suite 100
Frisco, Texas 75034
(telephone) 972-624-4100
(facsimile) 972-624-4106

(b) Assignment. This Agreement is not assignable without the prior written consent of Frisco, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that Frisco has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Vested Rights/Chapter 245 Waiver. The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code and nothing in this Agreement provides Frisco with fair notice of any project of the Owner. **OWNER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

(o) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(p) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of Frisco and the Owner and/or its authorized representatives.

(q) Owner's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to Frisco under this Agreement shall be considered to have been relied upon by Frisco and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

(r) References to Owner. "Owner" as used herein shall mean Owner, its officers, directors, agents, representatives, employees, heirs, representatives, legatees, successors, assigns, grantees, contractors, subcontractors, invitees, licensees, trustees and/or any other third party for whom Owner is legally responsible.

(s) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 8 and 9 herein are conspicuous, and the parties have read and understood the same.

(t) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.


CITY OF FRISCO, TEXAS

By: 
George Purefoy, City Manager

Date: Sept. 9. 2008

DARLING FRISCO PARTNERS, LTD., a Texas
limited partnership

By: Shoal Corporation,
a Texas corporation,
Its: General Partner

By: 
Robert C. Darling, Executive Vice
President

Date: 9/4/08

STATE OF TEXAS *

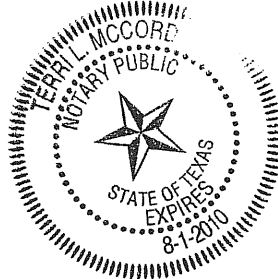
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COUNTY OF COLLIN *

BEFORE ME, the undersigned authority, on this day personally appeared George Purefoy, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **CITY OF FRISCO, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of Sept., 2008.

Notary Public in and for the State of Texas
My Commission Expires: 8/1/10



STATE OF TEXAS

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*

COUNTY OF DALLAS

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BEFORE ME, the undersigned authority, on this day personally appeared Robert C. Darling, President of **DARLING FRISCO PARTNERS, LTD.**, a Texas limited partnership, known to me to be one of the persons whose names are subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said company and partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of September, 2008.

Tina L. Sauseda

Notary Public in and for the State of Texas
My Commission Expires: _____



EXHIBIT A
(DESCRIPTION OF THE PROPERTY)

[6 pages attached]

FIELD NOTE DESCRIPTION DEVELOPERS TRACT

STATE OF TEXAS COUNTY OF DENTON

BEING a tract of land out of the J. MASTERS SURVEY, Abstract No. 831, the L. MORRELL SURVEY, Abstract No. 863 and the MEP&P RR SURVEY, Abstract No. 921 in the City of Frisco, Denton County, Texas being part of a 20 acre tract of land and a 61 acre tract of land described in deed to Jim Randell Newman dated December 4, 1992 and recorded in Volume 3393, Page 218 of the Real Property Records of Denton County, Texas, being part of the tract of land described in deed to Dale Clinton Newman dated December 4, 1992 and recorded in Volume 3393, Page 228 of the Real Property Records of Denton County, Texas, being part of the tract of land described in deed to J.N. Newman and Deanie Newman dated August 15, 1979 and recorded in Volume 970, Page 756 of the Deed Records of Denton County, Texas, being part of the 102.3658 acre tract of land described in deed to Darling Frisco Partners, Ltd. recorded in Denton County Clerk's File No. 2006-79419 of the Real Property Records of Denton County, Texas, being part of the 1.61 acre tract of land described in deed to Frisco Independent School District recorded in Denton County Clerk's File No. 2006-34213 of the Real Property Records of Denton County, Texas, being part of the 19.3708 acre tract of land described in deed to Frisco Independent School District recorded in Denton County Clerk's File No. 2006-34212 of the Real Property Records of Denton County, Texas and being more particularly described as follows:

BEGINNING at 3/8" iron rod found in the south line of a 196.82 acre tract of land described in deed to Bert Fields, Jr., recorded in Volume 523, Page 684 of the Deed Records of Denton County, Texas, said iron rod being the northeast corner of a tract of land described in deed to Centex Homes recorded in Denton County Clerk's File No. 05-37863 and 05-51584 of the Real Property Records of Denton County, Texas;

THENCE with the south line of said Fields tract and along a fence, North 89°45'57" East, a distance of 1296.43 feet to a 5/8" iron rod set with a red plastic cap stamped "KHA" (hereinafter called 5/8" iron rod set) in the west line of said 61 acre tract of land;

THENCE with said west lines the following courses and distances to wit:

-- South 00°14'03" East, a distance of 125.00 feet to an aluminum monument set, for the beginning of a non-tangent curve to the left with a radius of 500.00 feet, a central angle of 8°39'37", and a chord bearing and distance of North 85°26'08" East, 75.50 feet;

-- Northeasterly, with said curve, an arc distance of 75.58 feet to a 5/8" iron rod set, for the beginning of a curve to the right with a radius of 750.00 feet, a central angle of 2°59'56", and a chord bearing and distance of North 82°36'18" East, 39.25 feet;

-- Northeasterly, with said curve, an arc distance of 39.26 feet to a 5/8" iron rod set for corner;

-- North 42°19'51" East, a distance of 14.83 feet to a 5/8" iron rod set for corner;

-- North 87°06'20" East, a distance of 60.09 feet to a 5/8" iron rod set for corner;

-- South 44°48'56" East, a distance of 14.14 feet to a 5/8" iron rod set for corner;

- South 89°48'23" East, a distance of 213.60 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the right with a radius of 300.00 feet, a central angle of 22°10'01", and a chord bearing and distance of South 78°43'22" East, 115.34 feet;
- Southeasterly, with said curve, an arc distance of 116.07 feet to a 5/8" iron rod set, for the beginning of a curve to the left with a radius of 338.00 feet, a central angle of 19°39'12", and a chord bearing and distance of South 77°27'57" East, 115.37 feet;
- Southeasterly, with said curve, an arc distance of 115.94 feet to a 5/8" iron rod set for corner;
- South 02°42'26" West, a distance of 60.00 feet to a 5/8" iron rod set for corner;
- South 00°11'37" West, a distance of 101.53 feet to a 5/8" iron rod set for corner;
- South 29°08'50" East, a distance of 14.16 feet to a 5/8" iron rod set for corner;
- South 00°11'37" West, a distance of 474.90 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 80.97 feet to a 5/8" iron rod set for corner;
- South 49°32'56" East, a distance of 137.22 feet to a 5/8" iron rod set for corner;
- North 85°27'04" East, a distance of 14.14 feet to a 5/8" iron rod set for corner;
- South 49°32'56" East, a distance of 60.00 feet to a 5/8" iron rod set for corner;
- South 04°32'56" East, a distance of 14.14 feet to a 5/8" iron rod set for corner;
- South 49°32'56" East, a distance of 39.93 feet to a 5/8" iron rod set for corner;
- South 47°01'06" East, a distance of 113.23 feet to a 5/8" iron rod set for corner;
- South 49°32'56" East, a distance of 74.53 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the right with a radius of 275.00 feet, a central angle of 08°39'18", and a chord bearing and distance of South 45°13'17" East, 41.50 feet;
- Southeasterly, with said curve, an arc distance of 41.54 feet to a 5/8" iron rod set for corner;
- South 40°53'38" East, a distance of 3.24 feet to a 5/8" iron rod set for corner;
- South 82°42'25" East, a distance of 14.91 feet to a 5/8" iron rod set for corner;
- South 33°27'33" East, a distance of 50.00 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the left with a radius of 220.00 feet, a central angle of 16°05'24", and a chord bearing and distance of South 48°29'45" West, 61.58 feet;
- Southwesterly, with said curve, an arc distance of 61.78 feet to a 5/8" iron rod set for corner;
- South 21°40'14" West, a distance of 15.53 feet to a 5/8" iron rod set for corner;

- South 49°32'56" East, a distance of 106.77 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 141.00 feet, a central angle of 31°00'59", and a chord bearing and distance of South 65°03'26" East, 75.40 feet;
- Southeasterly, with said curve, an arc distance of 76.33 feet to a 5/8" iron rod set for corner;
- South 80°33'56" East, a distance of 18.93 feet to a 5/8" iron rod set for corner;
- North 19°21'43" East, a distance of 15.03 feet to a 5/8" iron rod set for corner;
- South 89°48'23" East, a distance of 60.00 feet to a 5/8" iron rod set for corner;
- South 00°11'37" West, a distance of 6.34 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the right with a radius of 55.00 feet, a central angle of 24°05'24", and a chord bearing and distance of South 31°06'11" East, 22.95 feet;
- Southeasterly, with said curve, an arc distance of 23.12 feet to a 5/8" iron rod set for corner;
- South 77°48'54" East, a distance of 141.16 feet to a 5/8" iron rod set for corner;
- South 00°11'37" West, a distance of 55.35 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 160.21 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 40.00 feet, a central angle of 90°00'00", and a chord bearing and distance of South 04°32'56" East, 56.57 feet;
- Southeasterly, with said curve, an arc distance of 62.83 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 18.00 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the left with a radius of 40.00 feet, a central angle of 90°00'00", and a chord bearing and distance of South 85°27'04" West, 56.57 feet;
- Southwesterly, with said curve, an arc distance of 62.83 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 115.00 feet to a 5/8" iron rod set for corner;
- South 31°06'51" East, a distance of 15.81 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 117.00 feet to a 5/8" iron rod set for corner;
- North 67°59'02" West, a distance of 15.81 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 115.00 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 40.00 feet, a central angle of 90°00'00", and a chord bearing and distance of South 04°32'56" East, 56.57 feet;
- Southeasterly, with said curve, an arc distance of 62.83 feet to a 5/8" iron rod set for corner;

- South 40°27'04" West, a distance of 18.00 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the left with a radius of 40.00 feet, a central angle of 90°00'00", and a chord bearing and distance of South 85°27'04" West, 56.57 feet;
- Southwesterly, with said curve, an arc distance of 62.83 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 90.00 feet to a 5/8" iron rod set for corner;
- South 31°06'51" East, a distance of 15.81 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 50.00 feet to a 5/8" iron rod set for corner;
- North 49°32'56" West, a distance of 16.33 feet to a 5/8" iron rod set for corner;
- North 67°59'02" West, a distance of 15.81 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 90.00 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 40.00 feet, a central angle of 90°00'00", and a chord bearing and distance of South 04°32'56" East, 56.57 feet;
- Southeasterly, with said curve, an arc distance of 62.83 feet to a 5/8" iron rod set for corner;
- South 49°32'56" East, a distance of 94.93 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 18.00 feet to a 5/8" iron rod set for corner;
- North 49°32'56" West, a distance of 58.00 feet to a 5/8" iron rod set for corner;
- South 40°27'04" West, a distance of 150.00 feet to a 5/8" iron rod set for corner;
- South 49°32'56" East, a distance of 58.00 feet to an aluminum monument set for corner;
- South 40°27'04" West, a distance of 60.00 feet to a 5/8" iron rod set for corner;
- North 49°32'56" West, a distance of 23.13 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 485.50 feet, a central angle of 09°53'02", and a chord bearing and distance of North 54°29'27" West, 83.65 feet;
- Northwesterly, with said curve, an arc distance of 83.75 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the right with a radius of 108.50 feet, a central angle of 22°26'28", and a chord bearing and distance of South 46°26'34" West, 42.22 feet;
- Southwesterly, with said curve, an arc distance of 42.50 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the right with a radius of 634.00 feet, a central angle of 37°52'32", and a chord bearing and distance of South 19°59'50" West, 411.52 feet;
- Southwesterly, with said curve, an arc distance of 419.11 feet to a 5/8" iron rod set for corner;
- South 45°59'00" West, a distance of 143.58 feet to a 5/8" iron rod set for corner;

- South 49°44'15" West, a distance of 34.96 feet to a 5/8" iron rod set for corner;
- South 02°53'50" West, a distance of 117.65 feet to a 5/8" iron rod set for corner;
- South 43°46'25" East, a distance of 39.44 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 1052.92 feet, a central angle of 46°07'00", and a chord bearing and distance of South 66°49'55" East, 824.79 feet;
- Southeasterly, with said curve, an arc distance of 847.48 feet to a 5/8" iron rod set for corner;
- South 89°53'25" East, a distance of 515.33 feet to a 5/8" iron rod set for corner;
- South 00°06'35" West, a distance of 33.00 feet to a 5/8" iron rod set in the north right-of-way line of Eldorado Parkway (FM 2934 - variable width ROW);

THENCE with said north right-of-way line, the following courses and distances to wit:

- North 89°53'25" West, a distance of 515.33 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the right with a radius of 1085.92 feet, a central angle of 46°07'00", and a chord bearing and distance of North 66°49'55" West, 850.64 feet;
- Northwesterly, with said curve, an arc distance of 874.04 feet to a 5/8" iron rod set for corner;
- North 43°46'25" West, a distance of 473.76 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 1205.92 feet, a central angle of 32°39'14", and a chord bearing and distance of North 60°06'01" West, 678.01 feet;
- Northwesterly, with said curve, an arc distance of 687.27 feet to a 5/8" iron rod set in the easterly line of a 1.61 acre tract of land described in deed to the Frisco Independent School District recorded in Denton County Clerk's File No. 2006-34213 of the Real Property Records of Denton County, Texas;

THENCE with the east line of said 1.61 acre part of the way, the following courses and distances to wit:

- North 33°01'51" West, a distance of 35.97 feet to an aluminum monument set for corner;
- North 10°57'34" East, a distance of 67.18 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 480.00 feet, a central angle of 27°17'34", and a chord bearing and distance of North 02°41'13" West, 226.49 feet;
- Northwesterly, with said curve, an arc distance of 228.65 feet to a 5/8" iron rod set for corner;
- North 16°20'00" West, a distance of 121.66 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the right with a radius of 420.00 feet, a central angle of 22°20'15", and a chord bearing and distance of North 05°09'53" West, 162.71 feet;
- Northwesterly, with said curve, an arc distance of 163.74 feet to a 5/8" iron rod set for corner;

-- North 06°00'15" East, a distance of 143.67 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the right with a radius of 420.00 feet, a central angle of 39°24'10", and a chord bearing and distance of North 25°42'20" East, 283.18 feet;

-- Northeasterly, with said curve, an arc distance of 288.84 feet to a 5/8" iron rod set for corner;

-- North 45°24'25" East, a distance of 115.37 feet to a 5/8" iron rod set, for the beginning of a tangent curve to the left with a radius of 480.00 feet, a central angle of 45°38'30", and a chord bearing and distance of North 22°35'10" East, 372.34 feet;

-- Northeasterly, with said curve, an arc distance of 382.37 feet to a 5/8" iron rod set for corner;

-- North 00°14'03" West, a distance of 261.52 feet to a 5/8" iron rod set for corner;

-- North 47°50'43" East, a distance of 33.40 feet to a 5/8" iron rod set for corner;

-- North 02°52'01" East, a distance of 77.85 feet to a 5/8" iron rod set, for the beginning of a non-tangent curve to the left with a radius of 375.00 feet, a central angle of 24°57'04", and a chord bearing and distance of South 76°51'07" West, 162.02 feet; -- Southwesterly, with said curve, an arc distance of 163.30 feet to a 5/8" iron rod set, for the beginning of a reverse curve to the right with a radius of 295.00 feet, a central angle of 25°21'59", and a chord bearing and distance of South 77°03'35" West, 129.54 feet;

-- Southwesterly, with said reverse curve, an arc distance of 130.60 feet to a 5/8" iron rod set for corner;

-- South 89°44'34" West, a distance of 455.13 feet to a 5/8" iron rod set for corner;

-- North 45°15'27" West, a distance of 14.14 feet to a 5/8" iron rod set for corner;

-- South 89°44'34" West, a distance of 60.00 feet to a 5/8" iron rod set for corner;

-- South 44°44'33" West, a distance of 14.14 feet to a 5/8" iron rod set for corner;

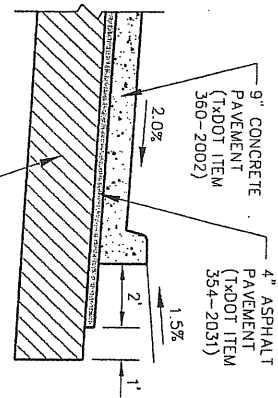
-- South 89°44'34" West, a distance of 115.00 feet to a 5/8" iron rod set in the east line of two tracts of land described in deed to Centex Homes recorded in Denton County Clerk's File No. 05-37863 and 05-51584 of the Real Property Records of Denton County, Texas;

THENCE with said east line and along a fence, North 00°15'28" West, a distance of 740.27 feet to the POINT OF BEGINNING and containing 4,310,117 square feet or 98.9467 acres of land.

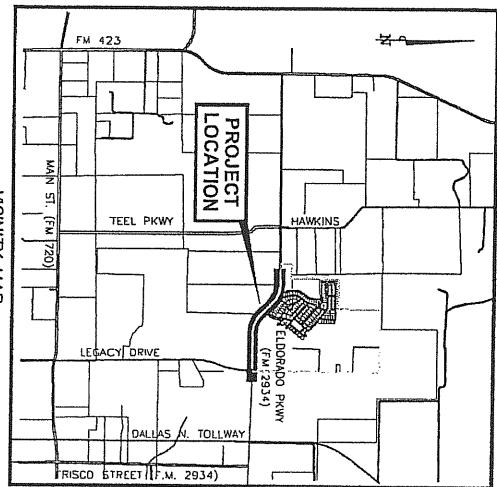
Bearing system based on the Texas State Plane Coordinate System, NAD 83, and Zone 4202 according to the City of Frisco Monumentation.

EXHIBIT B
**(DESCRIPTION OF PROJECT/
DEPICTION OF PROPERTY ACCESS IMPROVEMENTS)**

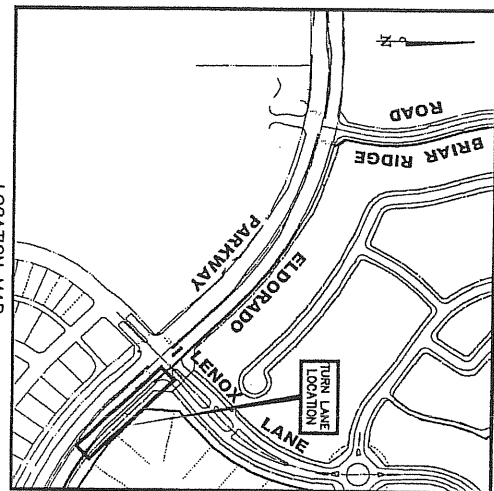
[2 pages attached]



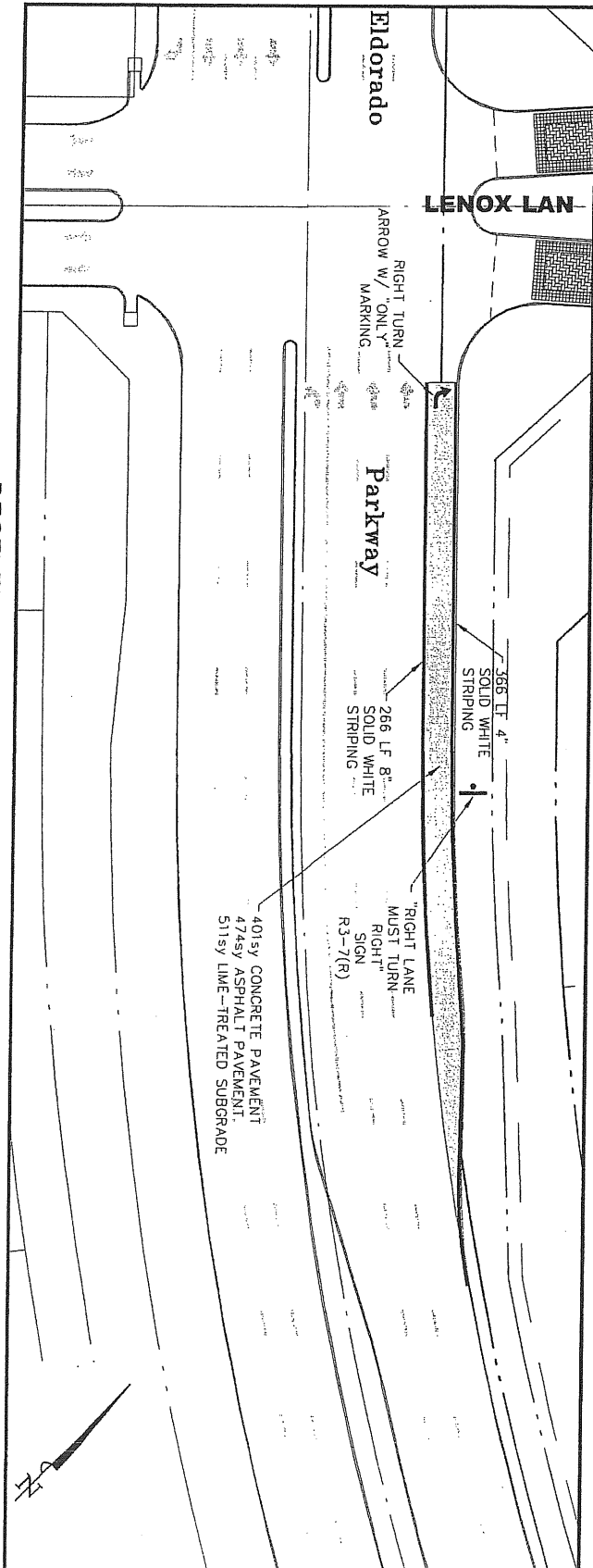
TYPICAL PAVEMENT SECTION
N/S



VICINITY MAP
N/S

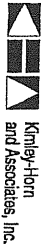


LOCATION MAP
N/S

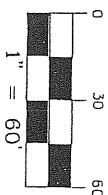


DECELERATION LANE IMPROVEMENTS FOR ELDERADO PARKWAY AT LENOX LANE

FRISCO, TEXAS



SHEET 3 OF 3

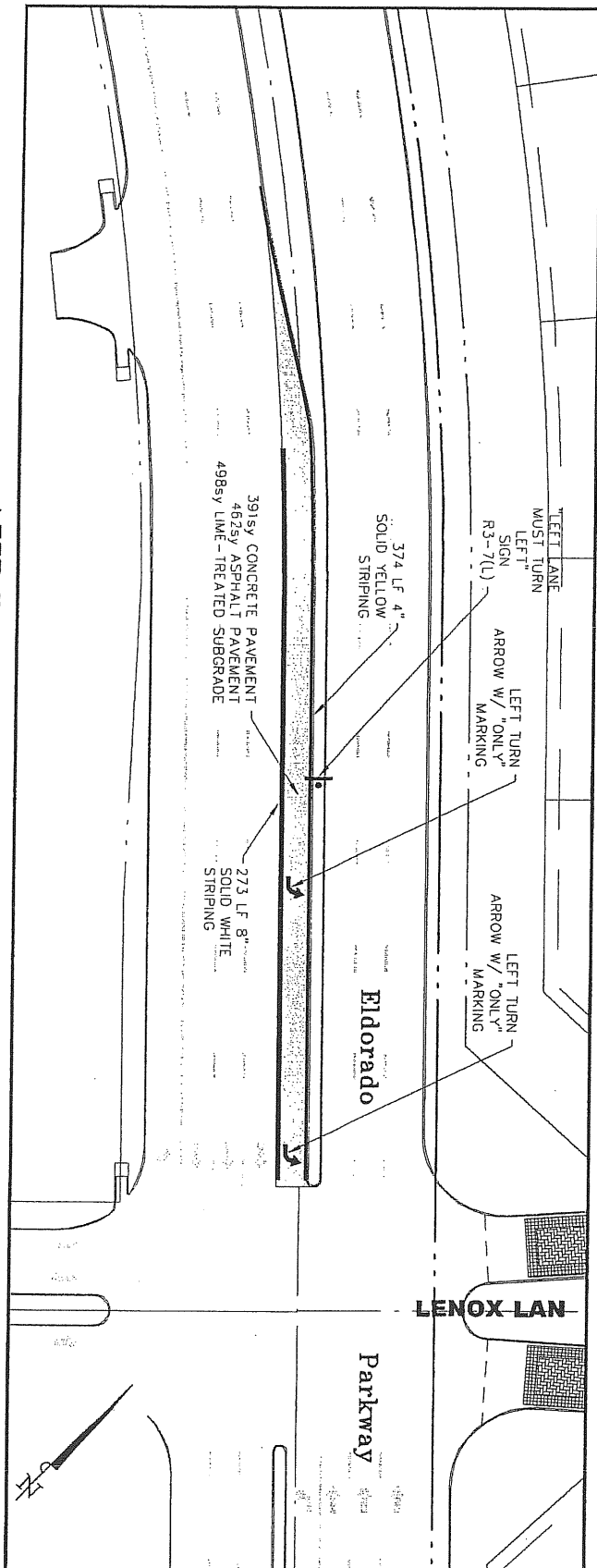
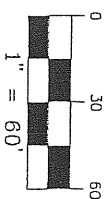




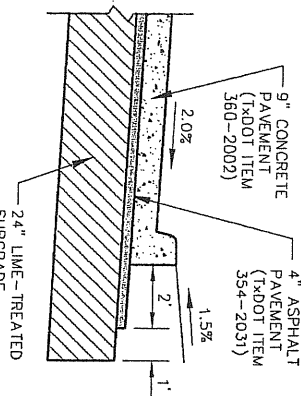
Kimley-Horn
and Associates, Inc.

LEFT TURN LANE IMPROVEMENTS FOR ELDORADO PARKWAY AT LENOX LANE FRISCO, TEXAS

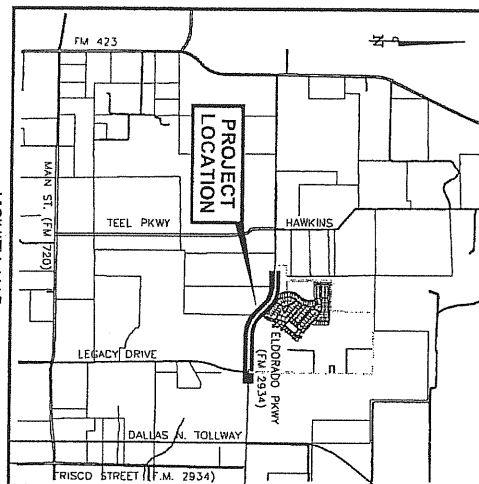
SHEET 2 OF 3



TYPICAL PAVEMENT SECTION
NTS



VICINITY MAP
NTS



LOCATION MAP
NTS

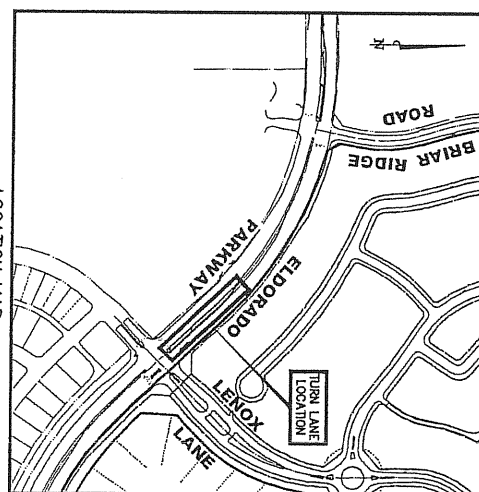


EXHIBIT C
(DESCRIPTION OF PROPERTY ACCESS IMPROVEMENTS AND TRAFFIC SIGNAL
ESTIMATED CONSTRUCTION COSTS)

[solo page attached]

NEWMAN VILLAGE PHASE I TxDOT ESCROW AMOUNT

Project: Eldorado Left Turn & Deceleration Lanes @ Lenox Lane
City of Frisco, Denton County, Texas

Acreage: N/A

Client: Darling Frisco Partners, L.P.

Lots: 0

Prepared By: Kimley-Horn and Associates, Inc.
5750 Genesis Court, Suite 200
Frisco, Texas 75034

Job Number: 67293003

File: Turn Lane qto 2007-05-25

Date: 5/25/07

PAVING - LEFT TURN LANE

| DESCRIPTION | TxDOT ITEM | QUANTITY | UNIT | COST / UNIT | TOTAL COST |
|-------------------------------------------|------------|----------|------|-------------|--------------------|
| 9" Concrete Pavement | 360-2002 | 391 | S.Y. | \$ 33.39 | \$13,066.62 |
| 4" Asphalt Pavement | 354-2031 | 462 | S.Y. | \$ 5.00 | \$2,312.42 |
| 24" Lime Treated Subgrade | 260-2026 | 498 | S.Y. | \$ 11.00 | \$5,478.67 |
| Lime (24" @ 4%) | 260-2002 | 17.9 | TON | \$ 130.51 | \$2,340.07 |
| Reflective Left Turn Arrow | 666-2053 | 2 | EA. | \$ 50.00 | \$100.00 |
| Reflective "ONLY" Pavement Wording | 666-2095 | 2 | EA. | \$ 75.00 | \$150.00 |
| "Left Lane Must Turn Left" Sign (R3-7L) | 644-2001 | 1 | EA. | \$ 503.62 | \$503.62 |
| 4" Solid Yellow Turn Lane Striping (TY 1) | 666-2011 | 374 | L.F. | \$ 0.18 | \$67.32 |
| 8" Solid White Turn Lane Striping (TY 1) | 666-2026 | 273 | L.F. | \$ 2.55 | \$696.15 |
| Total | | | | | \$24,714.87 |

PAVING - TRAFFIC SIGNAL

| DESCRIPTION | QUANTITY | UNIT | COST / UNIT | TOTAL COST |
|------------------------------|----------|------|--------------|--------------------|
| Traffic Signal Escrow Amount | 1 | L.S. | \$ 80,000.00 | \$80,000.00 |
| Total | | | | \$80,000.00 |

PAVING - DECELERATION LANE

| DESCRIPTION | TxDOT ITEM | QUANTITY | UNIT | COST / UNIT | TOTAL COST |
|-------------------------------------------|------------|----------|------|-------------|--------------------|
| 9" Concrete Pavement | 360-2002 | 401 | S.Y. | \$ 33.39 | \$13,400.52 |
| 4" Asphalt Pavement | 354-2031 | 474 | S.Y. | \$ 5.00 | \$2,371.52 |
| 24" Lime Treated Subgrade | 260-2026 | 511 | S.Y. | \$ 11.00 | \$5,618.67 |
| Lime (24" @ 4%) | 260-2002 | 18.4 | TON | \$ 130.51 | \$2,399.87 |
| Reflective Right Turn Arrow | 666-2053 | 1 | EA. | \$ 50.00 | \$50.00 |
| Reflective "ONLY" Wording | 666-2095 | 1 | EA. | \$ 75.00 | \$75.00 |
| "Right Lane Must Turn Right" Sign (R3-7R) | 644-2001 | 1 | EA. | \$ 503.62 | \$503.62 |
| 4" Solid White Turn Lane Striping (TY 1) | 666-2011 | 366 | L.F. | \$ 0.18 | \$65.88 |
| 8" Solid White Turn Lane Striping (TY 1) | 666-2026 | 266 | L.F. | \$ 2.55 | \$678.30 |
| Total | | | | | \$25,163.37 |

| | |
|--------------------------------|---------------------|
| LENOX LANE ESCROW TOTAL | \$129,878.24 |
|--------------------------------|---------------------|